(22,301)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 126.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR.

vs.

E. H. EDWARDS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 1, 1912.

1 *Caption.*

Pleas Before Hon. Eugene Lankford, Judge of the Faulkner Circuit Court, on the 25th Day of January, 1909.

No. 934.

E. H. EDWARDS
vs.
ST. L., I. M. & S. RY. CO.

2 *Complaint.*

In the Faulkner Circuit Court.

No. 934.

E. H. EDWARDS, Plaintiff,
vs.
ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Defendant.

Complaint at Law.

The plaintiff, E. H. Edwards, complains of the defendant, the Saint Louis, Iron Mountain & Southern Railway Company, and for cause of action against it says:

That the defendant is a railway company and corporation duly organized under the laws of the State of Arkansas, and as such owns and operates a line of railroad through Faulkner County, Arkansas, and as such railroad company is a common carrier of goods through said County, and as such railroad company transports goods over said line of railroad through said county to Conway, a station in said county on its said line of railroad.

Plaintiff says that he had shipped over the said line of railroad of the defendant from Salisaw, Oklahoma, a car load of corn, and the said defendant received the said car load of corn and agreed to transport same over its said line of railroad to Conway, Arkansas, and that the said car load of corn was consigned to the plaintiff at Conway, Arkansas. He says that said car load of corn arrived in Conway, Arkansas, on the said line of railroad of defendant under said shipment of December 17th, 1907, and that said shipment and car load of corn remained with the defendant at Conway, Arkansas, from December 17th, 1907, until January 2nd, 1908, on which latter date the said defendant, for the first time notified the plaintiff of the arrival of said shipment and car load of corn. Plaintiff says that the said defendant railroad company did not

3 within twenty-four hours after the arrival of said shipment and car load of corn at Conway, Arkansas, on the date afore-

said give notice by mail or otherwise to the plaintiff, who was the consignee thereof, of the arrival of said shipment, and did not give any identifying number, letter or initial of the car in which corn was shipped, and gave no notice whatsoever to the plaintiff or the consignee of said shipment, until January 2nd, 1908.

Plaintiff says that by reason of the failure to give said notice to him of the arrival of said shipment the said shipment remained at the station of the defendant at Conway, Arkansas, from December 17th, 1907, until January 2nd, 1908, and that by reason of said failure to give notice plaintiff did not know of the arrival of said shipment until said January 2nd, 1908; and that by reason thereof plaintiff was greatly damaged, and he is entitled to the damages hereinafter set forth, to-wit: The sum of Five Dollars for each and every day from December 18th, 1907, until January 2nd, 1908, to-wit: Fifteen days, making a total of Seventy-five Dollars.

Plaintiff further states that the entire freight charges on said car of corn for transportation of said shipment amounted to $66.00, according to defendant's bill of lading therefor, but that the defendant wrongfully claimed an additional charge of Ten Dollars for alleged car service or damages thereon, and refused to turn over said corn without payment of said additional Ten Dollars, which plaintiff paid to defendant on said January 2nd, 1908, under protest; and that thereby the defendant damaged the plaintiff in the sum of Ten Dollars.

Wherefore plaintiff prays for judgment against the defendant for the sum of Eighty-five Dollars penalty and damages; and plaintiff prays judgment for costs and for all proper relief.

FRAUENTHAL & ROBINS,
Attorneys for Plaintiff.

4 Summons issued January 3rd, 1908.
Summons served January 3rd, 1908.

5 In the Faulkner Circuit Court.

No. 934.

E. H. EDWARDS, Plaintiff,
vs.
ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Defendant.

Motion to Make Complaint More Specific.

Comes the defendant herein, and moves the court to make the plaintiff make his complaint more specific, and in so doing states:

That the Plaintiff alleges he shipped over Defendant's road a car load of corn to Conway, Ark., and that on account of his not being notified of the arrival of said corn on said date that he was damaged in the sum of $75.00, but Plaintiff does not state on what date said corn was shipped nor from what point it was shipped nor the

number of the car in which it was shipped nor the manner in which he was damaged nor by whom said corn was shipped.

The defendant here states that it cannot prepare or make its defense until these facts are known.

Wherefore Defendant prays that the plaintiff be required to set forth in his complaint the date said car was shipped, the number of said car, from what point said car was shipped and the manner in which he was damaged and by whom the car was shipped, and will ever pray.

E. B. KINSWORTHY,
Attorney for Defendant.

Filed Jan. 13, '08. A. M. Ledbetter, Clerk.

6 In the Faulkner Circuit Court.

E. H. EDWARDS, Plaintiff,
vs.
ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Defendant.

Demurrer.

Comes the defendant herein and demurs to the plaintiff's complaint, and for cause states:

First. Because the complaint does not state facts sufficient to constitute a cause of action.

Second. Because the court has no jurisdiction to try the said cause.

Third. Because the amount sued for in said complaint is not within the jurisdiction of this court.

Fourth. The defendant demurs specially and separately to that part of the complaint asking for $5.00, per day from the date said car is alleged to have arrived at Conway, Arkansas, until he is alleged to have been notified of the same, for the following reasons:

1. Because it does not set forth a cause of action.

2. Because there is no valid law giving the plaintiff a right of action for said sum.

3. Because the act of 1907, providing such a remedy is contrary to the Constitution of the State of Arkansas, and is contrary to the Constitution of the United States, and is unconstitutional and void.

4. Because said act is an interference with interstate commerce, and is therefore unconstitutional and void.

Fifth. Defendant demurs specially and separately to that part of the complaint claiming $10.00, the amount alleged to have
7 been paid for car service, because this court has no jurisdiction of said amount.

Wherefore, defendant prays that plaintiff's complaint be dismissed, and that it be hence discharged with its costs, and for all other proper relief.

E. B. KINSWORTHY,
Attorney for Defendant.

8 In the Faulkner Circuit Court, January Term, 1909.

No. 934.

E. H. EDWARDS
vs.
ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.

JANUARY 22ND, 1909.

On this day this cause come on for hearing and it is agreed by the parties hereto that it be submitted to the court upon the demurrer filed herein upon which defendants stands.

E. H. EDWARDS
vs.
ST. L., I. M. & S. RY. CO.

Judgment.

JANUARY 25TH, 1909.

Now on this day comes the plaintiff, E. H. Edwards in person and by his attorneys, Frauenthal & Robins, and comes the defendant, the St. Louis, Iron Mountain & Southern Railway Company, by Thos. B. Pryor, its attorney, and the demurrer of defendant to the complaint herein coming on to be heard, and the Court being well and sufficiently advised doth overrule said demurrer. And the defendant refusing to plead further, and electing to stand upon its demurrer, and the Court being well and sufficiently advised, it is by the Court considered, ordered, and adjudged that the plaintiff, E. H. Edwards, do have and recover of and from the defendant, the St. Louis, Iron Mountain & Southern Railway Company, the sum of Eighty Five Dollars, and all costs of this suit, for which execution may issue.

And the defendant at the time excepted to the action of the Court in overruling its said demurrer, and prayed an appeal to the Supreme Court from the judgment herein, which was granted.

9 *Fee Bill.*

Filing, Indexing & Docketing	$.30
Summons and Tax	1.25
1 Copy	.10
Filing returns	.10
W. M. Brady, Sheriff	.60
Copy of complaint for d'f't	1.10
Sub., for plaintiff	.50
Filing returns	.10
Order of continuance and index	.30
Docketing	.10
Swearing 3 witnesses to attendance	.30

D. D. Parker, witness, 3 days	4.50
P. T. McGlosson " 3 "	4.50
J. A. Sherrod " 3	4.50
Filing motion to make definite	.10
Order and Index	.30
Filing Demurrer	.10
Order and Index	.30
Judgment	.50
Transferring to Judgment Book	.50
Two Indexes	.20
Entering Appeal to Supreme Court	.50
Certificate and Seal	.50
Certificates to B. T. McGlosson, J. A. Sherrod, D. D Parker.	1.50
W. M. Brady, Sheriff	2.50
This Transcript, 9 pages, $2.70, 7 Indexed Items, 70	3.40
Total	$28.65

10 *Certificate.*

STATE OF ARKANSAS,
County of Faulkner:

I, A. M. Ledbetter, Clerk of the Faulkner Circuit Court, do hereby certify that the annexed and foregoing 8 pages contain a true and compared copy of the papers now on file in my office and of the record entries in the case of E. H. Edwards, vs. St. Louis, Iron Mountain & Southern Railway Company, #951.

In Testimony whereof, I have hereunto set my hand and affixed my official seal, this 28th day of May, 1909.

[SEAL.] A. M. LEDBETTER, *Clerk.*

11 *Filing in Supreme Court.*

No. 957.

ST. L., I. M. & S. RY. CO., Appellant,
vs.
E. H. EDWARDS, Appellee.

Transcript.

Filed August 4th, 1909.

P. D. ENGLISH, *Clerk.*

12 STATE OF ARKANSAS:

In the Supreme Court.

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 22nd day, being the fourth Monday of November, A. D. 1909, at the courthouse, in the City of

Little Rock, the following proceedings were had, to-wit: On the 10th day of January, 1910, a day of said term:

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Appellant,
vs.
E. H. EDWARDS, Appellee.

Appeal from Faulkner Circuit Court.

Record Entries.

Comes the appellee by attorney and files a motion to affirm the judgment herein for non-compliance by appellant with rule nine of the Court. Comes also the appellant by attorney and files a response to said motion and also a motion for additional time. And good cause being shown for the delay in filing appellant's briefs and for additional time, the said motion to affirm is by the court overruled, and it is ordered that said appellant have three weeks additional time from this date in which to prepare and file its briefs.

13 STATE OF ARKANSAS:

In the Supreme Court.

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 22nd day, being the fourth Monday of November, A. D. 1909, at the Courthouse, in the City of Little Rock, the following proceedings were had, to-wit: On the 31st day of January, 1910, a day of said term:

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Appellant,
vs.
E. H. EDWARDS, Appellee.

Appeal from Faulkner Circuit Court.

This cause being called for the appellants briefs and the same being filed, is now passed four weeks for submission.

14 STATE OF ARKANSAS:

In the Supreme Court.

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 22nd day, being the fourth Monday of November, A. D. 1909, at the Courthouse, in the City of Little Rock, the following proceedings were had, to-wit: On the 28th day of February, 1910, a day of said term:

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Appellant,
vs.
E. H. EDWARDS, Appellee.

Appeal from Faulkner Circuit Court.

This cause being regularly called, come the parties thereto by their attorneys, and said cause is submitted upon the transcript of the record and the briefs filed and by the court taken under advisement.

15 STATE OF ARKANSAS:

In the Supreme Court.

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 22nd day, being the fourth Monday of November, A. D. 1909, at the Courthouse, in the City of Little Rock, the following proceedings were had, to-wit: On the 14th day of March, 1910, a day of said term:

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Appellant,
vs.
E. H. EDWARDS, Appellee.

Appeal from Faulkner Circuit Court.

Judgment.

This cause came on to be heard upon the transcript of the record of the Circuit Court of Faulkner County, and was argued by counsel, on consideration whereof it is the opinion of the court that there is no error in the proceedings and judgment of said Circuit Court in this cause, except as to the cause of action alleged in the last paragraph of the complaint.

It is therefore considered by the court that so much of the judgment of said Circuit Court in this cause as is not based upon the cause of action alleged in the last paragraph of the complaint be and it is hereby affirmed with costs.

But it is further the opinion of the court that the last paragraph of the complaint does not allege a cause of action within the original jurisdiction of said Circuit Court, and said court erred in including the amount therein claimed in the judgment.

It is therefore considered by the court that so much of the judgment of said Circuit Court as awards a recovery of ten dollars under said paragraph be and it is hereby reversed, annulled and set aside with costs, and that said last paragraph be and it is hereby dismissed.

16 It is further considered that said appellant recover of said appellee all its costs in this court in this cause expended, and have execution thereof.

Frauenthal, J., disqualified and not participating.

17 No. 957.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.
VS.
EDWARDS.

Opinion.

McCULLOCH, *Ch. J.:*

This is an action to recover a penalty under the Act of April 19th, 1907, known as the demurrage statute. We passed on the validity of that statute and upheld it in Oliver v. C. R. I. & P. Ry. Co. 89 Ark. 466. In that case, the penalty was imposed for failure to furnish cars on demand for a shipment of freight. In the present case, a penalty is sought to be recovered for failure to give notice of the arrival of a carload of grain at its destination in this State, the same having been shipped from a point outside of the State. It was an interstate shipment, and the question presented is whether or not the statute can be applied. In the Oliver case an intra-state shipment was involved, and we found it unnecessary to decide whether or not the statute applied to a failure to furnish cars for an interstate shipment.

The section of the statute bearing on the present controversy reads as follows: "Sec. 3. Railroad Companies shall, within twenty-hours after the arrival of shipments, give notice, by mail or otherwise, to consignee of the arrival of shipments, together with the weight and amount of freight charges due thereof; and where goods or freight in carload quantities arrive, such notices shall contain also identifying numbers, letter and initials of the car or cars, and if transferred in transit, the number and initials of the car in which originally shipped. Any railroad company failing to give such notice shall forfeit and pay to the shipper, or other party whose interest is affected, the sum of five dollars per car per day, or fraction of a day's delay, on all carload shipments, and one cent per hundred pounds per day, or fraction thereof, on freight in less than carloads, with a minimum charge of five cents for any one package, after the expiration of the said twenty-four hours; provided, that not more than five dollars per day is charged for any one consignment not in excess of a carload."

18 There are other sections of the statute imposing demurrage charges on consignees for failure to remove freight, thus making the burdens of the whole statute reciprocal.

It is contended that the demurrage charge is a burden on interstate commerce, which cannot be imposed by State Legislation, and that the Statute is to that extent void. We have not been able to discover any attempt on the part of the Inter-State Commerce Commission to fix or regulate reciprocal demurrage, and counsel in the case do not call our attention to any. In fact, the Commission, in an opinion delivered in 1907, (12 I. C. C. 61) disclaims the existence of any such power in the Commission. That opinion was based on a claim made by a shipper on a shipment made prior to the enactment on 1906 of the Hepburn Amendment, which was in froce

at the time of the decision; but we understand the opinion to relate to the powers of the Commission under the Hepburn Amendment. The text writers on this subject seem to so construe that opinion. 1 Drinker on Interstate Commerce Commission Act, sec. 277.

Whether the Interstate Commerce Act of Congress, or any of its several amendments, do confer such power on the Commission we need not further enquire, as it is sufficient for the purpose of determining the question before us that the power has not been exercised, even if it has ever been conferred. Mr. Justice Brewer, speaking for the Supreme Court of the United States in the recent case of Mp. Pac. Ry. Co. — Larabee Mills, 211 U. S. 612, said: "The fact that Congress has entrusted power to that commission does not, in the absence of action by it, change the rule which existed prior to the creation of the commission. Congress could always regulate interstate commerce, and could make specific provisions in reference thereto, and yet this has not been held to interfere with the power of the State in these incidental matters. A mere delegation by Congress to the commission of a like power has no greater effect, and does not of itself disturb the authority of the State. It is not contended that the commission has taken any action in respect to the particular matters involved. It may never do so, and no one
19 can in advance anticipate what it will do when it acts. Until then the authority of the State *if* merely incidental matters remains undisturbed."

That case involved an effort on the part of the State to control or prevent discrimination between shippers in the matter of switching or delivering cars for the shipment of goods. Answering the contention that it directly affected interstate commerce *ttansactions*, the learned justice said. "This common law duty the State, in a case like the present, may at least in the absence of Congressional action compel a carrier to discharge."

In C. M. &c. Ry. Co. v. Solan, 169 U. S. 133, a statute of Iowa was upheld providing that "no contract, receipt, rule or regulation shall exempt any corporation engaged in transporting persons or property by railway from liability of a common carrier, or carrier of passengers, which would exist had no contract, receipt, rule or regulation been made or entered into." And Mr. Justice Gray, in delivering the opinion of the court, said: "The rules prescribed for the construction of railroads, and for their management and operation, designed to protect persons and property, otherwise endangered by their use, are strictly within the scope of the local law. They are not, in themselves, regulations of interstate commerce, although they control, in some degree, the conduct and the liability of those engaged in such commerce. So long as Congress has not legislated upon the particular subject, they are rather to be regarded as legislation in aid of such commerce, and as a rightful exercise of the police power of the State *ro* regulate the relative rights and duties of all persons and corporations within its limits."

In Western Union Telegraph Company v. James, 162 U. S. 650 Ark. the Court, passing on a statute of Georgia imposing a penalty of $100.00 on Telegraph Companies for failure to transmit and de-

liver telegrams with diligence and impartiality, held that the statute was valid and did not burden or interfere with interstate commerce. Speaking through Mr. Justice Brockham, this court said: "The statute in question is of a nature that is an aid of the performance of a duty of this company that would exist in the absence of any
20 such statute and it is in nowise obstructive of its duty as a telegraph company. It imposes a penalty for the purpose of enforcing this general duty of the company. The direction that the delivery of the message shall be made with impartiality and good faith and with due diligence is not an addition to the duty which it would owe in the absence of such a statute. Can it be said that the imposition of a penalty for the violation of a duty which the company owed by the general law of the land is a regulation of an obstruction to interstate commerce within one meaning of that clause of the Federal Constitution under discussion? We think not."

We understand the rule established by the various decisions of the Supreme Court of the United States to be that where Congress, or the Commission created for that purpose, prescribe regulations upon a particular subject relating to interstate commerce, the same are exclusive in their operation and the States no longer have power to make regulations on that subject; but that until Congress or the Commission has acted upon a particular matter of regulation a state may enforce its regulations which do not directly burden interstate commerce. There being no regulation, as we have seen, either by Congress or by the Interstate Commerce Commission on the particular subject now under consideration—that is, of reciprocal demurrage—the test as to the validity of the State regulation is whether it is a direct burden upon or is in aid of commerce.

Aside from any statute on the subject, the duty rests upon a public carrier as a part of its contract to make delivery to the consignee of the freight entrusted to it for transportation, and "every delivery must be made to the right person at a reasonable time, at the proper place and in the proper manner." 2 Hutchinson on Carriers, sec. 664. The authorities are in conflict on the question whether, in the absence of a statute, a carrier by rail is required to give notice to the consignee of the arrival of freight; but it cannot be doubted that such a requirement, in aid of a speedy delivery of freight, is a reasonable regulation and may lawfully be imposed. It is in no sense a burden on commerce, but is an aid of it. Bagg. v. R. R. Co. 109, N. C. 279. It does not in any degree affect
21 the contract of carriage, as did the Georgia statute which was condemned by the Supreme Court of the United States in Ry. Co. v. Murphey, 196 U. S. 194.

The statute thus condemned provided that it should be the duty of the initial or any connecting carrier, within thirty days after application made by the shipper, consignee or their assigns to trace lost and damaged or destroyed freight and inform said applicant, when, where and by which carrier said freight was lost damaged or destroyed, etc., and that on failure to do so said carrier should be liable for the value of the freight lost, damaged or destroyed as if the same had occurred on its line.

In a very recent case, however, the Supreme Court of the United States, distinguishing it from the Murphy case, upheld a similar statute except that it applied to carriers on whose lines property was when lost or damaged. The Court held that the statute was not an unlawful interference with interstate commerce.—Atlantic Coast Gin Co. vs. Majorsby. M. S. O. P.

In L., R. & Ft. S. Ry. Co. vs. Hanniford, 49 Ark. 291, this court upheld a statute which made it unlawful for railroad companies to endeavor to collect from the owner or consignee a greater sum than that specified in the bill of lading and prescribed a penalty for a refusal to deliver freight upon payment of the charges specified in the bill of lading. The court held that the statute was for the purpose of requiring the prompt delivery of freight, and was in aid of, and not a burden upon, commerce. It is true that in the later case of Spratlin vs. Ry. Co. 76 Ark. 82, following the decision of the Supreme Court of the United States in Ry. Co. vs. Hefley, 158 U. S. 98, we held that the statute above referred to had been abrogated or suspended by the conflicting act of Congress on that particular subject. But that does not lessen the force of the Hanniford case in so far as it holds that the statute was in aid of commerce.

In Ark. So. Ry. Co. vs. German Nat. Bnk. 77 Ark. 482, this court held that the statute imposing a penalty on railroads for delivering freight except on surrender of bill of lading is not a burden on interstate commerce, but is in aid thereof, and is enforcible in the absence of Congressional legislation inconsistent therewith.

22 We conclude that the statute under consideration is valid and enforcible.

In a separate paragraph of the complaint another cause of action is set forth for the recovery of $10.00 alleged to have been unlawfully charged for alleged car service which was paid under protest, and a recovery of that amount is sought. The Court overruled a demurer and rendered judgment for the amount, as well as for the demurrage.

The amount claimed is not within the jurisdiction of the circuit court, as the cause of action set forth in that paragraph is not to recover damages to personal property nor to recover a penalty.

The judgment of the circuit court is affirmed except as to the $10.00 recovered under the last paragraph of the complaint, and as to that the judgment is reversed and the cause dismissed.

Frauenthal J., Disqualified.

23 STATE OF ARKANSAS:

In the Supreme Court.

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 22nd day, being the fourth Monday of November, A. D. 1909, at the Courthouse, in the City of Little Rock, the following proceedings were had, to-wit: On the 4th day of April, 1910, a day of said term:

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Appellant,
vs.
E. H. EDWARDS, Appellee.

Appeal from Faulkner Circuit Court

Comes the appellant by attorney and files a petition for rehearing, and prays for two weeks time in which to briefs the same, which time is by the Court granted.

24 STATE OF ARKANSAS:

In the Supreme Court.

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 22nd day, being the fourth Monday of November, A. D. 1909, at the Courthouse, in the City of Little Rock, the following proceedings were had, to-wit: On the 18th day of April, 1910, a day of said term:

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Appellant,
vs.
E. H. EDWARDS, Appellee.

Appeal from Faulkner Circuit Court.

The petition for rehearing filed herein being called, is submitted and by the Court taken under advisement.

25 In the Supreme Court, State of Arkansas.

#957.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY,
Appellant,
vs.
E. H. EDWARDS, Appellee.

Petition for Rehearing.

Comes the appellant and petitions the court to set aside its judgment rendered in this cause, and to grant it a re-hearing and for grounds therefor, states:

I.

That the court erred in holding that the Act of April 9, 1907 of Arkansas, known as the Barker Reciprocal Demurrage Statute is valid when applied to interstate shipments.

II.

That the court erred in holding that Section 3 of said Act is valid when applied to interstate shipments.

III.

That the court erred in holding that said demurrage act is not a burden on interstate commerce and is therefore valid when applied to interstate shipments.

IV.

That the Court erred in holding that the Interstate Commerce Commission has not made any attempt to fix or regulate reciprocal demurrage and the questions of demurrage and car service on interstate shipments are not exclusively within the jurisdiction of the Interstate Commerce Commission.

V.

That the Interstate Commerce Commission Conference Ruling No. 54 provides that "Questions of demurrage and car service on interstate shipments are within the jurisdiction of the Interstate Commerce Commission, even when pertaining to interstate shipments, are within the control of State Commissions."

26 VI.

That the Court erred in holding that the said Act was not in conflict with Section 8, Article 1 of the Constitution of the United States in giving to Congress power "To regulate commerce with foreign nations and among the several states and with the Indian Tribes."

VII.

That the court erred in holding that said Act of the Legislature of Arkansas is not in conflict with the Act of Congress approved February 4, 1887 and the subsequent Acts of Congress supplementary thereto and Acts amendatory thereof.

LEVICK P. MILES,
T. B. PRYOR,
Att'ys for Appellant.

27 STATE OF ARKANSAS:

In the Supreme Court.

Be it remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held on the 22nd day, being the fourth Monday of November, A. D. 1909, at the Courthouse, in the city of Little Rock, the following proceedings were had, to-wit: On the 25th day of April, 1910, a day of said term:

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Appellant,
vs.
E. H. EDWARDS, Appellee.

Appeal from Faulkner Circuit Court.

Rehearing Overruled.

Being fully advised, the petition for rehearing filed herein is by the Court overruled.

28 *Clerk's Certificate.*

STATE OF ARKANSAS, *ss:*

Supreme Court.

I, Peyton D. English, clerk of said court, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of the St. Louis, Iron Mountain & Southern Railway Company, Appellant, vs. E. H. Edwards, Appellee, and also of the opinion of the court rendered therein, as the same now appears on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in Little Rock, Arkansas, this July 28, 1910.

[Seal of the Supreme Court of Arkansas.]

PEYTON D. ENGLISH,
Clerk Supreme Court of Arkansas,
By W. P. SADLER, *D. C.*

29 Supreme Court of Arkansas.

No. 957.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Appellant,
vs.
E. H. EDWARDS, Appellee.

Petition for Writ of Error, Assignment of Errors, & Prayer for Reversal.

Petition for Writ of Error, Assignment and Prayer.

Considering itself aggrieved by the final decision of the Supreme Court in rendering judgment against it in the above entitled case, the St. Louis, Iron Mountain & Southern Railway Company, the above named appellant, hereby prays a writ of error, from said

judgment and decision, to the Supreme Court of the United States, and an order fixing the amount of a supersedeas bond.

And the said St. Louis, Iron Mountain & Southern Railway Company assigns the following errors in the records and proceedings of the said case:

The Supreme Court of Arkansas erred in holding and deciding that Act No. 193 of the General Assembly of the State of Arkansas, approved April 9, 1907, and Section Three thereof were valid, as applied to an interstate shipment. The validity of said Act and of said Section thereof, as applied to an interstate shipment, was denied and drawn in question by the St. Louis, Iron Mountain & Southern Railway Company, upon the ground that same were repugnant to the Constitution and Laws of the United States, and in contravention thereof, as being and creating a burden upon the interstate commerce and an unlawful attempt upon the part of the State of Arkansas to regulate and control same in respect to matters already covered by the legislation of Congress and the exercise of the jurisdiction of the Interstate Commerce Commission thereby conferred.

30 That said errors are more particularly set forth as follows:

The Supreme Court of Arkansas erred in holding and deciding:

First. That said Act No. 193 of the General Assembly of the State of Arkansas, approved April 9th, 1907, is valid when applied to interstate shipments; and that same does not impose burdens upon and seek to regulate interstate commerce, in contravention of the powers of Congress conferred by, and the laws passed under the authority of, Section 8, Article One of the Constitution of the United States, and in contravention of the Acts of Congress of Feb. 4 1887 and June 26, 1906 and acts amendatory thereof, and of the authority thereby conferred upon, and the rules thereunder made by, the Interstate Commerce Commission, regulating demurrage and notice of arrival of interstate shipments.

Second. That said Section 3 of said Act No. 193 is valid, when applied to interstate shipments; and that same does not impose burdens upon and seek to regulate interstate commerce, in contravention of the powers of Congress conferred by, and the laws passed under the authority of, Section 8, Article One of the Constitution of the United States, and in contravention of the Acts of Congress of Feb. 4, 1887 and June 26, 1906 and acts amendatory thereof, and of the authority thereby conferred upon, and the rules thereunder made by, the Interstate Commerce Commission, regulating demurrage and notice of arrival of interstate shipments.

Third. That Congress and the Interstate Commerce Commission had not regulated or fixed, or made any attempt to regulate or fix, demurrage charges or rules governing the giving of notice of the arrival of interstate shipments.

31 Fourth. That the jurisdiction of the Interstate Commerce Commission over questions of demurrage and car service on interstate shipments had not been exercised.

Fifth. That said Act No. 193 and said Section 3 thereof were not

in conflict with the Acts of Congress of February 4, 1887 and June 26, 1906 and acts amendatory thereof.

Sixth. That said Act and said Section 3 thereof was valid and enforceable in this cause and was not in conflict with Section 8, Article One of the Constitution of the United States, which confers on Congress the power to regulate commerce with foreign nations and amongst the several states, or with the Acts of February 4, 1887 and June 26, 1906 passed in pursuance thereof.

Seventh. That said Act and said Section 3 thereof were valid as applied to interstate commerce and not in conflict with Section 8, Article One of the Constitution of the United States and the Acts of Congress of Feb. 4, 1887 and June 26, 1906 and acts amendatory thereof, passed in pursuance to said provision of the Constitution, and not in conflict with the Rules and Tariffs adopted by the Interstat Commerce Commission and regularly filed in its offices in pursuance to said Acts of Congress; and particularly that same were not in conflict with Rule 4*a* of Freight Tariff Mo. Pac. No. 625-B, which provided that;—Consignee shall be notified by carrier's agent in writing, or as otherwise agreed to by carrier and consignee, within twenty-four hours after arrival of cars and bil-ing at destination, such notice to contain point of shipment, car initials and numbers, and the contents, and, if transferred in transit, the initials and number of the original car. In case car is not placed on public delivery track within twenty-four hours after notice of arrival has
32 been sent, a notice of placement shall be given to consignee."

For which errors the appellant, the St. Louis, Iron Mountain and Southern Railway Company, prays that the said judgment of the Supreme Court of Arkansas, dated March 21st, 1910 and April 25, 1910, be reversed and a judgment rendered in favor of the appellant company and for costs.

W. E. HEMINGWAY,
JAS. H. STEVENSON,
Attorneys for the St. Louis, Iron Mountain & Southern Railway Company.

Filed July 28, 1910.

PEYTON D. ENGLISH, *Clerk*,
By W. P. SADLER, *D. C.*

33 STATE OF ARKANSAS,
Supreme Court, ss:

Allowance of Writ of Error.

Let the writ of error issue, upon the execution of a bond by the St. Louis, Iron Mountain & Southern Railway Company to E. H. Edwards, in the sum of Two Hundred Dollars, such bond, when approved, to act as a supersedeas.

E. A. McCULLOCH,
Chief Justice Supreme Court of Arkansas.

Filed July 28, 1910.

PEYTON D. ENGLISH, *Clerk*,
By W. P. SADLER, *D. C.*

34 *Bond.*

THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,
Plaintiff in Error,
vs.
E. H. EDWARDS, Defendant in Error.

Bond.

Know all men by these presents, That we, the St. Louis, Iron Mountain & Southern Railway Company, as principal and H. C. Rather and W. M. Kavanaugh as sureties, are held and firmly bound unto the St. Louis, Iron Mountain & Southern Railway Company, in the sum of Two Hundred Dollars, to be paid to the said Railway Company, to which payment, well and truly to be made, we bind ourselves jointly and severally firmly by these presents.

Sealed with our seals, and dated this July 28th 1910.

Whereas, the above-named plaintiff in error seeks to prosecute its writ of error to the U. S. Supreme Court to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Arkansas.

Now, therefore, The condition of this obligation is such, that if the above-named plaintiff in error shall prosecute its said writ of error to effect, and answer all costs and damages that may be adjudged if it shall fail to make good its plea, then this obligation to be void, otherwise to remain in full force and effect.

THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN R. R. CO.
W. E. HEMINGWAY,
Ass't to V. Pr., G. S.

H. C. RATHER.
W. M. KAVANAUGH.

35 STATE OF ARKANSAS,
County of Pulaski, ss:

——— ———, ——— ———, being each duly sworn, on oath depose and say: We are each of lawful age and are citizens of the State of Arkansas, and know the contents of the foregoing instrument to which we have attached our names. We each for himself say we are worth the sum of Two Hundred Dollars over and above all debts, liabilities and exemptions.

——— ———.
——— ———.

Subscribed *to* and sworn to before me this — — ——— ———.

——— ———,
Notary Public.

(My Commission expires — ——— ———.)

Bond approved, and to operate as a supersedeas.
Dated, July 28, 1910.
E. A. McCULLOCH,
Chief Justice Supreme Court of Arkansas.

Filed July 28, 1910.
PEYTON D. ENGLISH, *Clerk,*
By W. P. SADLER, *D. C.*

36 *Writ of Error.*

[SEAL.] The President of the United States of America to the Honorable Judges of the Supreme Court of the State of Arkansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between E. H. Edwards and the St. Louis, Iron Mountain & Southern Railway Company, a corporation, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute or commission; a manifest error hath happened, to the great damage of the said St. Louis, Iron Mountain & Southern Railway Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have
37 the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable John M. Harlan, Acting Chief Justice of the United States, the 28th day of July, in the year of our Lord one thousand, nine hundred and ten.

[The Seal of the Circuit Court U. S. A., Western Division of East. Dist. Ark.]

[SEAL.] W. P. FEILD,
Clerk Circuit Court United States, Eastern District of Arkansas, Western Div.,
By W. PRESLEY FEILD, *D. C.*

Allowed July 28, 1910.
E. A. McCULLOCH,
Chief Justice Supreme Court of Arkansas.

Filed July 28, 1910.
PEYTON D. ENGLISH, *Clerk,*
By W. P. SADLER, *D. C.*

38 *Certificate of Lodgment.*

Supreme Court, State of Arkansas, *ss.*

I, Peyton D. English, Clerk of the said court, *to* hereby certify there was lodged with me as such clerk on July 28th 1910 in the matter of The St. Louis, Iron Mountain & Southern Railway Company, versus, E. H. Edwards:—

1. The original bond of which a copy is herein set forth.
2. Two copies of the writ of error, as herein set forth,—one for each defendant, and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Little Rock, Ark., this 28th day of July, 1910.

[Seal of the Supreme Court of Arkansas.]

PEYTON D. ENGLISH,
Clerk Supreme Court of Arkansas,
By W. P. SADLER, *D. C.*

39 *Citation.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to Edward H. Edwards, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C. within thirty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the Supreme Court of the State of Arkansas, wherein the St. Louis, Iron Mountain & Southern Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there by, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of the State of Arkansas, this July 28, 1910.

E. A. McCULLOCH,
Chief Justice Supreme Court of Arkansas.

Attest:
P. D. ENGLISH,
Clerk Supreme Court of Arkansas.

I, attorney of record, for the defendant in error in the above entitled case, hereby acknowledge due service of the above citation, and enter an appearance in the Supreme Court of the United States.

Aug. 3, 1910.

R. W. ROBINS,
Attorney for E. H. Edwards.

Filed August 8, 1910.

PEYTON D. ENGLISH,
Clerk Supreme Court of Arkansas,
By W. P. SADLER, *D. C.*

40 *Return to Writ.*

UNITED STATES OF AMERICA,
Supreme Court of Arkansas, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Arkansas, in the City of Little Rock this 10th day of August A. D. 1910.

[Seal of the Supreme Court of Arkansas.]

PEYTON D. ENGLISH,
Clerk Supreme Court of Arkansas,
By W. P. SADLER, *D. C.*

Costs.

Transcript to Supreme Court of Arkansas	$3.40
Costs in Circuit Court	25.15
Making Transcript for U. S. Supreme Court	5.50

Paid by Plaintiff in Error.

Attest:

PEYTON D. ENGLISH,
Clerk Supreme Court of Arkansas,
By W. P. SADLER, *D. C.*

Endorsed on cover: File No. 22,301. Arkansas Supreme Court. Term No. 126. St. Louis, Iron Mountain & Southern Railway Company, plaintiff in error, vs. E. H. Edwards. Filed August 23d, 1910. File No. 22,301.

SUBJECT INDEX.

INDEX TO CASES CITED.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1912

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.....*Plaintiff in Error,*

v. No. 126.

E. H. EDWARDS.....*Defendant in Error.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

STATEMENT.

The defendant in error instituted this suit against plaintiff in error to recover penalties provided in section 3 of an act of the Legislature of Arkansas, approved April 19, 1907. The complaint alleged that plaintiff had shipped over the line of railroad operated by the defendant from Sallisaw, Okla., to Conway, Ark., a car load of corn, and the defendant had failed to give the plaintiff notice of the arrival of the car of corn at Conway, Ark. Plaintiff prayed judgment for the penalty as damages (Record, page 12). To this complaint a demurrer was interposed setting forth, among other grounds, the following:

Fourth. The defendant demurs specially and separately to that part of the complaint asking for $5.00 per day from the date

said car is alleged to have arrived at Conway, Ark., until he is alleged to have been notified of the same, for the following reasons:

1. Because it does not set forth a cause of action.

2. Because there is no valid law giving the plaintiff a right of action for said sum.

3. Because the Act of 1907, which provides such a remedy is contrary to the Constitution of the State of Arkansas, and is contrary to the Constitution of the United States, and is unconstitutional and void.

4. Because said act is an interference with interstate commerce, and is therefore unconstitutional and void.

The demurrer was overruled by the trial court and appeal prayed and granted to the Supreme Court of Arkansas.

The act of the Legislature of Arkansas referred to is entitled "An Act to Regulate Freight Transportation by Railroad Companies Doing Business in the State of Arkansas," and section 3 thereof that is involved in this case is copied in full in the opinion of the Supreme Court of Arkansas, the opinion delivered by Chief Justice McCulloch being as follows:

> "This is an action to recover a penalty under the Act of April 19, 1907, known as the demurrage statute. We passed on the validity of that statute and upheld it in Oliver v. C., R. I. & P. Ry. Co., 89 Ark. 466. In that case the penalty was imposed for failure to furnish cars on demand for a shipment of freight. In the present case a penalty is sought to be recovered for failure to give notice of the arrival of a car load of grain at its destination in this State, the same having been shipped from a point outside of the State. It was an interstate shipment, and the question presented is whether or not the statute can be applied. In the Oliver case an intrastate shipment was involved, and we found it unnecessary to

decide whether or not the statute applied to a failure to furnish cars for an interstate shipment.

"The section of the statute bearing on the present controversy reads as follows: 'Sec. 3. Railroad companies give notice, by mail or otherwise, to consignee of the arrival of shipments, together with the weight and amount of freight charges due thereof; and where goods or freight in car load quantities arrive, such notices shall contain also identifying numbers, letters and initials of the car or cars, and if transferred in transit, the number and initials of the car in which originally shipped. Any railroad company failing to give such notice shall forfeit and pay to the shipper, or other party whose interest is affected, the sum of five dollars per car per day, or fraction of a day's delay, on all car load shipments, and one cent per hundred pounds per day, or fraction thereof, on freight in less than car loads, with a minimum charge of five cents for any one package, after the expiration of the said twenty-four hours; provided, that not more than five dollars per day is charged for any one consignment not in excess of a car load.'

"There are other sections of the statute imposing demurrage charges on consignees for failure to remove freight, thus making the burdens of the whole statute reciprocal.

"It is contended that the demurrage charge is a burden on interstate commerce, which can not be imposed by State legislation, and that the statute is to that extent void. We have not been able to discover any attempt on the part of the Interstate Commerce Commission to fix or regulate reciprocal demurrage, and counsel in the case do not call our attention to any. In fact, the commission, in an opinion delivered in 1907 (12 I. C. C. 61) disclaims the existence of any such power in the commission. That opinion was based on a claim made by a shipper on a shipment made prior to the enactment in 1906 of the Hepburn amendment, which was in force at the time of the decision; but we understand the opinion to relate to the powers of the commission under the Hepburn amendment. The text writers on this subject seem to so construe that opinion. 1 Drinker on Interstate Commerce Commission Act, section 277.

"Whether the Interstate Commerce act of Congress, or any of its several amendments, do confer such power on the commission we need not further inquire, as it is sufficient for

the purpose of determining the question before us that the power has not been exercised, even if it has ever been conferred. Mr. Justice Brewer, speaking for the Supreme Court of the United States in the recent case of Mo. Pac. Ry. Co. v. Larabee Mills, 211 U. S. 612, said: 'The fact that Congress has entrusted power to that commission does not, in the absence of action by it, change the rule which existed prior to the creation of the commission. Congress could always regulate interstate commerce, and could make specific provisions in reference thereto, and yet this has not been held to interfere with the power of the State in these incidental matters. A mere delegation by Congress to the commission of a like power has no greater effect, and does not of itself disturb the authority of the State. It is not contended that the commission has taken any action in respect to the particular matters involved. It may never do so, and no one can in advance anticipate what it will do when it acts. Until then the authority of the State in merely incidental matters remains undisturbed.

"That case involved an effort on the part of the State to control or prevent discrimination between shippers in the matter of switching or delivering cars for the shipment of goods. Answering the contention that it directly affected interstate commerce transactions, the learned justice said: 'This common law duty the State, in a case like the present, may at least in the absence of congressional action compel a carrier to discharge.'

"In C. M., etc., Ry. Co. v. Solan, 169 U. S. 133, a statute of Iowa was upheld providing that, 'no contract, receipt, rule or regulation shall exempt any corporation engaged in transporting persons or property by railway from liability of a common carrier, or carrier of passengers which would exist had no contract, receipt, rule or regulation been made or entered into.' And Mr. Justice Gray, in delivering the opinion of the court, said: 'The rules prescribed for the construction of railroads, and for their management and operation, designed to protect persons and property, otherwise endangered by their use, are strictly within the scope of the local law. They are not, in themselves, regulations of interstate commerce, although they control, in some degree, the conduct and the liability of those engaged in such commerce. So long as Congress has not legislated upon the particular subject, they are rather to be regarded as legislation in aid of such commerce, and as a rightful exercise of the police power of the State to regulate

the relative rights and duties of all persons and corporations within its limits.'

"In Western Union Telegraph Company v. James, 162 U. S. 650, Ark., the court, passing on a statute of Georgia imposing a penalty of $100.00 on telegraph companies for failure to transmit and deliver telegrams with diligence and impartiality, held that the statute was valid and did not burden or interfere with interstate commerce. Speaking through Mr. Justice Brockham, this court said: 'The statute in question is of a nature that is an aid of the performance of a duty of this company that would exist in the absence of any such statute and it is in nowise obstructive of its duty as a telegraph company. It imposes a penalty for the purpose of enforcing this general duty of the company. The direction that the delivery of the message shall be made with impartiality and good faith and with due diligence is not an addition to the duty which it would owe in the absence of such a statute. Can it be said that the imposition of a penalty for the violation of a duty which the company owed by the general law of the land is a regulation of an obstruction to interstate commerce within one meaning of that clause of the Federal Constitution under discussion? We think not.'

"We understand the rule established by the various decisions of the Supreme Court of the United States to be that where Congress, or the commission created for that purpose, prescribe regulations upon a particular subject relating to interstate commerce, the same are exclusive in their operation and the States no longer have power to make regulations on that subject; but that until Congress or the commission has acted upon a particular matter of regulation a State may enforce its regulations which do not directly burden interstate commerce. There being no regulation, as we have seen, either by Congress or by the Interstate Commerce Commission on the particular subject now under consideration—that is, of reciprocal demurrage—the test as to the validity of the State regulation is whether it is a direct burden upon or is in aid of commerce.

"Aside from any statute on the subject, the duty rests upon a public carrier as a part of its contract to make delivery to the consignee of the freight entrusted to it for transportation, and 'every delivery must be made to the right person at a reasonable time, at the proper place and in the proper man-

ner.' 2 Hutchinson on Carriers, section 664. The authorities are in conflict on the question whether, in the absence of a statute, a carrier by rail is required to give notice to the consignee of the arrival of freight; but it can not be doubted that such a requirement in aid of a speedy delivery of freight, is a reasonable regulation and may lawfully be imposed. It is in no sense a burden on commerce, but is an aid of it. Begg. v. R. R. Co., 109 N. C. 279. It does not in any degree affect the contract of carriage, as did the Georgia statute which was condemned by the Supreme Court of the United States in Ry. Co. v. Murphy, 196 U. S. 194.

"The statute thus condemned provided that it should be the duty of the initial or any connecting carrier, within thirty days after application made by the shipper, consignee or their assigns to trace lost and damaged or destroyed freight and inform said applicant, when, where and by which carrier said freight was lost, damaged or destroyed, etc., and that on failure to do so said carrier should be liable for the value of the freight lost, damaged or destroyed as if the same had occurred on its line.

"In a very recent case, however, the Supreme Court of the United States, distinguishing it from the Murphy case, upheld a similar statute except that it applied to carriers on whose lines property was when lost or damaged. The court held that the statute was not an unlawful interference with interstate commerce. Atlantic Coast Gin Co. v. Majorsby, M. S. O. P.

"In L. R. & Ft. S. Ry. Co. v. Hanniford, 49 Ark. 291, this court upheld a statute which made it unlawful for railroad companies to endeavor to collect from the owner or consignee a greater sum than that specified in the bill of lading and prescribed a penalty for a refusal to deliver freight upon payment of the charges specified in the bill of lading. The court held that the statute was for the purpose of requiring the prompt delivery of freight, and was in aid of, and not a burden upon, commerce. It is true that in the later case of Spratlin v. Ry. Co., 76 Ark. 82, following the decision of the Supreme Court of the United States in Ry. Co. v. Hefley, 158 U. S. 98, we held that the statute above referred to had been abrogated or suspended by the conflicting act of Congress on that particular subject. But that does not lessen the force of the Hanniford case in so far as it holds that the statute was in aid of commerce.

"In Ark. So. Ry. Co. v. German Nat. Bank, 77 Ark. 482, this court held that the statute imposing a penalty on railroads for delivering freight except on surrender of bill of lading is not a burden of interstate commerce, but is in aid thereof, and is enforceable in the absence of congressional legislation inconsistent therewith.

"We conclude that the statute under consideration is valid and enforceable."

The petition for rehearing filed in the Supreme Court of Arkansas, and the petition for writ of error to this court assigns the following errors:

"The Supreme Court of Arkansas erred in holding and deciding that Act No. 193 of the General Assembly of the State of Arkansas, approved April 9, 1907, and section 3 thereof were valid, as applied to an interstate shipment. The validity of said act and of said section thereof, as applied to an interstate shipment, was denied and drawn in question by the St. Louis, Iron Mountain & Southern Railway Company, upon the ground that same were repugnant to the Constitution and laws of the United States, and in contravention thereof, as being and creating a burden upon interstate commerce and an unlawful attempt upon the part of the State of Arkansas to regulate and control same in respect to matters already covered by the legislation of Congress and the exercise of the jurisdiction of the Interstate Commerce Commission thereby conferred.

"That said errors are more particularly set forth as follows:

"The Supreme Court of Arkansas erred in holding and deciding:

"*First.* That said Act No. 193 of the General Assembly of the State of Arkansas, approved April 9, 1907, is valid when applied to interstate shipments; and that same does not impose burdens upon and seek to regulate interstate commerce, in contravention of the powers of Congress conferred by, and the laws passed under the authority of, section 8, article 1 of the Constitution of the United States, and in contravention of the acts of Congress of February 4, 1887, and June 26, 1906,

and acts amendatory thereof, and of the authority thereby conferred upon, and the rules thereunder made by, the Interstate Commerce Commission, regulating demurrage and notice of arrival of interstate shipments.

"*Second.* That said section 3 of said Act No. 193 is valid, when applied to interstate shipments; and that same does not impose burdens upon and seek to regulate interstate commerce, in contravention of the powers of Congress conferred by, and the laws passed under the authority of, section 8, article 1, of the Constitution of the United States, and in contravention of the acts of Congress of February 4, 1887, and June 26, 1906, and acts amendatory thereof, and of the authority thereby conferred upon, and the rules thereunder made by, the Interstate Commerce Commission, regulating demurrage and notice of arrival of interstate shipments.

"*Third.* That Congress and the Interstate Commerce Commission had not regulated or fixed, or made any attempt to regulate or fix, demurrage charges or rules governing the giving of notice of the arrival of interstate shipments.

"*Fourth.* That the jurisdiction of the Interstate Commerce Commission over questions of demurrage and car service on interstate shipments had not been exercised.

"*Fifth.* That said Act No. 193 and said section 3 thereof were not in conflict with the Acts of Congress of February, 1887, and June 26, 1906, and acts amendatory thereof.

"*Sixth.* That said act and said section 3 thereof was valid and enforceable in this cause and was not in conflict with Section 8, Article 1 of the Constitution of the United States, which confers on Congress the power to regulate commerce with foreign nations and amongst the several States, or with the Acts of February 4, 1887, and June 26, 1906, passed in pursuance thereof.

"*Seventh.* That said act and said section 3 thereof were valid as applied to interstate commerce and not in conflict with Section 8, Article 1 of the Constitution of the United States, and the Acts of Congress of February 4, 1887, and June 26, 1906, and acts amendatory thereof, passed in pursuance to said provision of the Constitution, and not in conflict with the rules and tariffs adopted by the Interstate Commerce Commission

and regularly filed in its offices in pursuance to said Acts of Congress; and particularly that same were not in conflict with Rule 4a of Freight Tariff, Mo. Pac. No. 625-B, which provided that: Consignee shall be notified by carrier's agent in writing, or as otherwise agreed to by carrier and consignee, within twenty-four hours after arrival of cars and billing at destination, such notice to contain point of shipment, car initials and numbers, and the contents, and, if transferred in transit, the initials and number of the original car. In case car is not placed on public delivery track within twenty-four hours after notice of arrival has been sent a notice of placement shall be given to the consignee."

Petition for rehearing was overruled by the Supreme Court and petition for writ of error was allowed by the Chief Justice of the Supreme Court of Arkansas. (Record 14-16).

BRIEF.

In May, 1907, the Legislature of the State of Pennsylvania passed an Act similar to the Act of Arkansas involved in this appeal. The Act of Arkansas under consideration was approved April 19, 1907. The Interstate Commerce Commission in an exhaustive opinion, held the Pensylvania Act invalid when applied to interstate commerce.

In the case of Wilson Produce Co. v. Pennsylvania R. R. Co., the Interstate Commerce Commission in its opinion states:

> "The first question to be determined is the authority of the Pennsylvania statute of May 24, 1907, fixing the charges which a railroad may impose for demurrage or storage in its cars.
>
> "Track storage charges when associated with an interstate movement appertain directly to interstate commerce. They represent the carrier's compensation for services rendered in conection with the transportation. A shipment is not completed until arrival at destination and delivery to the consignee; and the authority vested in Congress by the com-

merce clause of the Constitution covers everything relating to the delivery of freight transported between the States. *Rhodes* v. *Iowa*, 170 *U. S.* 412, 426; *Bowman* v. *Chicago & Northwestern Ry.*, 125 *U. S.* 465; *McNeill* v. *Southern Ry. Co.*, 202 *U. S.* 543, 559.

"In the case of *Interstate Commerce Commission* v. *Detroit, Grand Haven & Milwaukee Ry. Co.*, 167 *U. S.* 633, the Supreme Court suggested that the commission would be acting within its powers if it should order that railway companies should regard cartage, when furnished free, as a terminal charge and include it in their schedules. If cartage charges may be regulated as a proper subject for national regulation. Federal authority over demurrage and track storage charges in connection with interstate commerce can not be challenged.

"We think we may go further and hold that the Federal authority in this field is exclusive. It is well settled that in the absence of Congressional action the States may legislate with respect to matters which are strictly local in character, even though by so doing they may to some extent regulate interstate commerce; but, as said by the Supreme Court in the *Port Wardens* case, 12 How., 319, 'whatever subjects of this power are in their nature national, or admit only of one uniform system or plan or regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress.'

"The question of terminal charges imposed in connection with interstate transportation would seem to be within the scope of this principle. The subject is national in character, and uniformity of regulation is essential. If the individual States were permitted to legislate in this field, endless confusion and discrimination would be the result. Such legislation would operate as a direct burden upon interstate commerce, and the Supreme Court has repeatedly refused to sustain State laws which had this effect. *Wabash, St. Louis & Pacific Ry. Co.* v. *Illinois*, 118 *U. S.* 557; *Rhodes* v. *Iowa*, 170 *U. S.* 412; *Bowman* v. *Chicago & Northwestern Ry. Co.*, 125 *U. S.* 465; *McNeill* v. *Southern Ry. Co.*, 202 *U. S.* 543; *Central of Georgia Ry. Co.* v. *Murphey*, 196 *U. S.* 194, 204.

"But it is unnecessary to decide that the Federal authority over this subject is exclusive, inasmuch as Congress has taken definite action and removed the subject altogether from the field of State regulation. The first section of the act to regu-

late commerce, after outlining the scope of the commission's jurisdiction, defines transportation as including 'all services in connection with the receipt, delivery, elevation, transfer in transit * * * storage, and handling of property transported.' Section 6 provides that the carrier's schedules shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require. Beyond all possibility of doubt, therefore, the duty of regulating terminal charges when related to interstate transportation has been lodged with the Interstate Commerce Commission, and Federal courts have so held. *United States* v. *Standard Oil Co.*, 148 *Fed. Rep.* 719, 722; *Michie* v. *New York, New Haven & Hartford R. R. Co.*, 151 *Fed. Rep.* 694, 695, 14 *I. C. C. Rep.* 170.

This opinion is referred to and followed in the case of *Peel et al.* v. *C. R. R. Co. of New Jersey* 18 I. C. C., p. 33, in which the commission states:

> "It does not appear necessary to do more than to refer to the decision of the commission in *Wilson Produce Co.* v. *P. R. R. Co.*, 14 *I. C. C. Rep.*, 170, in which it was held that the duty of regulating terminal charges, when related to traffic between States, has been lodged with the commission, and cases therein cited; to *Texas & Pacific Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 *U. S.* 426; *Interstate Commerce Commission* v. *C. & A. R. R. Co.*, 215 *U. S.*, 479; *Interstate Commerce Commission* v. *I. C. R. R. Co.*, 215 *U. S.* 452; *Baltimore & Ohio R. R. Co.* v. *United States*, 215 *U. S.* 481, to show that the act confers upon the commission jurisdiction to determine the reasonableness or discriminatory nature of the regulations herein involved."

The opinion of the commission in *Wilson Produce Co.* v. *P. R. R. Co.*, was rendered prior to the opinion of the Supreme Court of Arkansas in this case.

Mr. Barnes in his work on Interstate Transportation and under the head of *Jurisdiction of Interstate Commerce Commission exclusive over demurrage and other terminal charges affecting interstate shipments—State regulations not applicable*, says:

In *Wilson Produce Co.* v. *P. R. R. Co.*, the commission stated that demurage charges when associated with an interstate movement appertained directly to interstate commerce. They represent the carrier's compensation for services rendered in connection with the transportation. A shipment is not completed until its arival at destination *and delivery to the consignee;* (Italics are ours), and the authority vested in Congress by the commerce clause of the Constitution covers everything related to the delivery of freight transported between the States.

"In the case of *Interstate Commerce Commission* v. *D., G. H. & M. Ry. Co.*, the Supreme Court suggested that the commission would be acting within its power if it should order that railway companies should regard cartage, when furnished free, as a terminal charge and include it in their schedule. If cartage charges may be regarded as a proper subject of national regulation, Federal authority over demurrage and terminal charges in connection with interstate commerce can not be challenged. The comission further held that the Federal authority in this field is exclusive. * * *

"The question of terminal charges imposed in connection with interstate transportation would seem to be within the scope of this principle. The subject is national in character and uniformity of regulation is essential. If the individual States were permitted to legislate in this field, endless confusion and discrimination would be the result. Such legislation would operate as a direct burden upon interstate commerce and the Supreme Court of the United States has repeatedly refused to sustain State laws which had this effect.

"But it is unnecessary to decide that the Federal authority over this subject is exclusive, inasmuch as Congress has taken definite action and removed the subject altogether from, and free of, State regulation. The language of the act is sufficiently broad to cover demurrage or car service charges on interstate shipments.

"The first section of the Act to Regulate Commerce, after outlining the scope of the commission's jurisdiction, defines 'transportation,' as including 'all services in connection with the receipt, delivery, elevation, transfer in transit, * * * storage, and handling of property transported.' Barnes' Interstate Transportation, section 282 (Rev. Ed.)."

The cases cited to support the above text is conclusive of the question that until a delivery to the consignee is consummated of an interstate shipment that Federal authority over the shipment is supreme and exclusive. Mr. Barnes, in the same section just quoted from, makes the further statement:

> "Beyond all possibility of doubt, therefore, the duty of regulating terminal charges when related to interstate transportation has been lodged with the Interstate Commerce Commission, and Federal Courts have so held. The power of Congress to act with reference to this subject is indisputable; that Congress has made provision for the regulation of these charges is just as clear; and it follows necessarily that a State law which conflicts with the Federal statutes must give way. The authority expressly conferred upon the Interstate Commerce Commission would be nugatory if the concurrent authority of the States were recognized."

It is stated in the opinion of the Supreme Court of Arkansas deciding this case, that there had been no attempt on the part of the Interstate Commerce Commission to fix or regulate reciprocal demurrage and that the attention of the court had not been called to any, and that, in fact, the commission in an opinion delivered in 1907, 12 I. C. C. 61, disclaimed the existence of any such power in the commission, but regardless of the opinion delivered in 1907, referred to by the Supreme Court of Arkansas, the commission later held that demurrage rules were governed by the act to regulate commerce.

Mr. Barnes, in his work in the same section quoted from above, on this subject, states:

> "On March 16, 1908, the commission decided that demurrage rules and charges applicable to interstate shipments are governed by the act to regulate commerce, and, therefore, are within its jurisdiction and not within the jurisdiction of State authority. (Citing Rule 223, Con. Rule Bul. No. 4, May

12, 1908). Any other view would open a wide door for the use of such rules and charges to effect the discrimination which the act prohibits. Demurrage rules and charges must be observed as strictly as transportation rules and charges. The commission can not, therefore, recognize as lawful, any rule governing demurrage, the application of which is dependent upon the judgment or discretion of some person or which provides for exemption therefrom in certain exigencies in the creation of which the carrier has no part." (Citing Rule 223, Con. Rul. Bul. No. 4, May 12, 1908.)

The writer has not had an opportunity of referring to the rule cited, No. 223, but assumes that the author is correct in his citation.

In section 276, under the head *"States no Authority over Terminal Services and Charges Affecting Interstate Transportation,"* Mr. Barnes, in his work above referred to, states:

> "Property shipped from a point in one State to a point in another State retains the character of interstate commerce until it is *actually delivered to the consignee,* and an order of a State authority commanding the carrier to place cars containing such property on the private siding of the consignee for unloading, is void as an interference with the authority vested in the Interstate Commerce Commission by the Act to Regulate Commerce. (Italics are ours).
>
> "All services incidental or necessary to the transportation and final delivery of an interstate shipment are a part of the interstate transportation, and any charges relating thereto are subject to the provisions of the act."

This act of the Arkansas Legislature is an attempt to exercise jurisdiction over interstate commerce in matters which have been the subject of action both by Congress and also of the Interstate Commerce Commission. Section 17 of the act expressly provides among other things: "Interstate railroads shall furnish cars on application for interstate shipments, the same in all respects as other cars are to be furnished by interstate railroads under the provisions of this act." This section is merely referred to to emphasize the

fact that the entire act makes no distinction between commerce within the State and that between States. The validity of this act is now involved in the case of John E. Hampton et al., plaintiff in error, v. St. Louis, Iron Mountain & Southern Railway Company, defendant in error, which has been submitted to this court, and the authorities to sustain the contention of the invalidity of the act are collated in the brief filed on behalf of defendant in error in that case. The case cited by the Supreme Court of Arkansas, 12 I. C. C. 61, is certainly overruled by the case of Wilson Produce Co. v. Railway, 14 I. C. C. 170, and in the later case of Peel & Company v. Railway, 18 I. C. C. 33, and the rule adopted by the commission above referred to. The other cases cited in the opinion of the Supreme Court are not controlling as the same question was not involved.

We respectfully submit that the act in question finds no support in the decisions referred to in the opinion of the Supreme Court of Arkansas and that the language contained in the opinion of the Supreme Court when this act was for the first time under consideration correctly states the law, wherein the court says:

> "At first view, there seems to be ample room for confusion and conflict between Federal and State laws dealing with commercial subjects, and many adjudications show this to be true. The difficulty, however, when present, is in the nature of the case, or in the nature of the legislation. When, as in this case, the controversy is connected with the shipment of goods, the difficulty can not arise, for every shipment will be to a point within the State or to a point without the State, and consequently one for the application of the Federal law, or one free from its contact. It seems that there could, as to domestic business, be no objection to the continued enforcement within a State of a statute broad enough in its terms to include interstate business. To the extent that it conemplated, or in its operation effected, any regulation of interstate business, it would be void; but that would be the limit of its invalidity, and in all other matters it would stand to be enforced." Oliver v. C., R. I. & P. Ry. Co., 89 Ark. 468.

It fully appears from the authorities that Congress has legislated upon the question involved; that the Interstate Commerce Commission has exercised jurisdiction thereof, and it follows that all State statutes affecting the subject when applied to interstate commerce must give way. *Shephard* v. *Northern Pacific Ry. Co.*, 184 *Fed.* 770; *Rhodes* v. *State of Iowa*, 170 *U. S.* 412; *McNeill* v. *Railway Co.*, 202 *U. S.* 561.

We respectfully submit that the judgment herein should be reversed.

MARTIN L. CLARDY,

H. G. HERBEL,

LOVICK P. MILES,

THOS. B. PRYOR,

Attorneys for Plaintiff in Error.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY *v.* EDWARDS.

ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

No. 123. Submitted January 20, 1913.—Decided February 24, 1913.

Action by Congress on a subject within its domain under the commerce clause of the Constitution results in excluding the States from acting on that subject.

As applied to interstate shipments, the State cannot now impose penalties for delay in delivery to consignee, as Congress has acted on that subject by the passage of the Hepburn Act. *Chicago, R. I. & Pac. Ry. Co.* v. *Hardwick Elevator Co.*, 226 U. S. 426.

The so-called Demurrage Statute of 1907 of Arkansas requiring railroad companies to give notice to consignees of arrival of shipments and penalising them for non-compliance is an unconstitutional interference with interstate commerce so far as interstate shipments are concerned.

94 Arkansas, 394, reversed.

THE facts, which involve the constitutionality under the commerce clause of the Constitution of the United

States of the Arkansas Demurrage Statute, are stated
the opinion.

Mr. Martin L. Clardy, *Mr. H. G. Herbel*, *Mr. Lovick*
Miles and *Mr. Thos. B. Pryor* for plaintiff in error:

The act is an attempt to exercise jurisdiction over inte
state commerce in matters which have been the subje
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no distinction between commerce within the State an
that between States. The validity of this act is now i
volved in the case of *Hampton* v. *St. Louis, I. M. & S. R*
Co., (see *post*, p. 458) which has been submitted to th
court, and the authorities to sustain the contention of th
invalidity of the act are collated in the brief filed on beha
of defendant in error in that case. The case cited by th
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No appearance for defendant in error.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

This writ of error is prosecuted to secure the reversal of a judgment for seventy-five dollars, the amount of penalties imposed upon the plaintiff in error for delay in giving notice to the consignee, defendant in error, of the arrival of a carload of freight at the termination of an interstate commerce shipment. The exaction was authorized by § 3 of a law of the State of Arkansas, approved April 19, 1907 (Act 193, Acts of 1907, p. 453), entitled "An Act to regulate freight transportation of railroad companies doing business in the State of Arkansas." The section is copied in the margin.[1]

[1] SEC. 3. Railroad companies shall, within twenty-four hours after the arrival of shipments, give notice, by mail or otherwise, to consignee of the arrival of shipments, together with the weight and amount of freight charges due thereof; and where goods or freight in carload quantities arrive, such notices shall contain also identifying numbers, letters and initials of the car or cars, and if transferred in transit, the number and initials of the car in which originally shipped. Any railroad company failing to give such notice shall forfeit and pay to the shipper, or other party whose interest is affected, the sum of five dollars per car per day, or fraction of a day's delay, on all carload shipments, and one cent per hundred pounds per day, or fraction thereof, on freight in less than carloads, with a minimum charge of five cents for any one package, after the expiration of the said twenty-four hours; *provided*, that not more than five dollars per day be charged for any one consignment not in excess of a carload.

The right to impose the penalty was challenged and the validity of the section of the statute authorizing it was assailed by demurrer on the ground of repugnancy to the commerce clause of the Constitution of the United States. The question here for decision is whether the court below was right in overruling the Federal defense which was thus relied upon. 94 Arkansas, 394.

The Arkansas statute is styled in the opinion of the court below "the Demurrage Statute," and the penalty imposed by § 3 is referred to as a "demurrage charge." And in the same connection it is observed "There are other sections of the statute imposing demurrage charges on consignees for failure to remove freight, thus making the burdens of the whole statute reciprocal." It follows that the section under consideration was but intended to subject carriers to the penalties which the section provides because of a failure to make prompt delivery of freight on arrival at destination. As applied to interstate commerce, however, we think such penalties were not enforceable because of a want of power in the State to impose them in view of the legislation of Congress existing at the time the alleged duty to give notice arose. Recently in *Chicago, Rock Island & Pacific Railway Co.* v. *Hardwick Farmers' Elevator Company*, 226 U. S. 426, a regulation of the State of Minnesota enacted after the passage of the Hepburn Act imposing penalties on carriers for failing on demand to furnish a supply of cars for the movement of interstate traffic was held invalid because of the absence of power in a State in consequence of the Hepburn Act to provide for such penalties. While the case before us concerns the power of a State over the delivery of cars in consummation of an interstate shipment, we nevertheless think that the *Hardwick Case* is controlling because the legislation of Congress as clearly excludes the right of a State to penalize for failure to deliver interstate freight at the termination of an interstate shipment as it was

found to prevent a State from penalizing for failure to furnish cars for the initiation of the movement of interstate traffic. This conclusion is necessary since the amendment to § 1 of the Act to Regulate Commerce by which a definition is given to the term transportation and which in the *Hardwick Case* was held to exclude the right of a State to penalize for the non-delivery of cars to initiate the movement of an interstate shipment, by its very terms embraces the obligation of a carrier to deliver to the consignee, and therefore by the same token excludes the right of a State to penalize on that subject. The provision of the Hepburn Act in question is copied in the margin.[1]

We are referred in argument to no other provision of the act tending in the slightest degree to indicate that the duties which were united by the provisions of one section of the act were divorced by another and were made therefore subject to the possibility of varying and it may be conflicting state penalties. On the contrary, in this instance as in the one considered in the *Hardwick Case*, the context of the act adds strength to the conviction produced by the definition of the first section, and therefore gives rise to the conviction that the context of the statute, not only as was held in the *Hardwick Case*, excludes the right of a State to regulate by penalties or demurrage charges the obligation of furnishing the means of interstate transportation, but also excludes power in a State to impose penalties as a means of compelling the per-

[1] . . . the term "transportation" shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto.

formance of the duty to promptly deliver in consummation of such transportation.

The judgment of the Supreme Court of Arkansas is reversed with costs, and the case is remanded for further proceedings not inconsistent with this opinion.

Reversed.